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David J. Hollander, OSB #782452

Hollander, Lebenbaum & Gannicott

1500 SW First Avenue, Suite 700

Portland, Oregon 97201-5825

Telephone: (503) 222-2408

Facsimile: (503) 222-0659

E-mail: david@hollanderlaw.com

Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

PORTLAND DIVISION

JANET HOLMGREN,

Case No.: 3:10-CV-369-HA

Plaintiff,

TEMPORARY RESTRAINING ORDER

v.

CITY OF OREGON CITY,

Defendant.

Pursuant to ORCP 65(b) this matter was heard by the Court ex parte on July 8, 2010.

Having reviewed the submissions of Plaintiff, the Court finds that:

1. Plaintiff has submitted credible evidence that there is a justiciable controversy about whether James Birch violated the law by monitoring Plaintiff's privileged and private email communications in order to gain unfair advantage in this litigation.

2. Plaintiff has submitted credible evidence that Mr. Birch did so using the network owned by Defendant Oregon City and also through his home network.

1 3. Plaintiff has submitted credible evidence that Mr. Birch has tried to hide his access to
2 Plaintiff's privileged and private email account by marking Plaintiff's emails as unread.

3 4. Plaintiff has submitted credible evidence that Mr. Birch has some computer expertise
4 and he is likely to try to destroy, tamper or otherwise alter evidence that is critical to Plaintiff's
5 case if he is provided with notice.

6 5. Accessing a person's private email is a criminal act under ORS 165.543 and 18 USC
7 § 2511.

8 6. Plaintiff has the right to examine the computers and hard drives in question pursuant
9 to FRCP 34.

10 7. Plaintiff will likely sustain immediate and irreparable harm if Defendant Oregon City
11 provides notice to Birch or Birch otherwise learns of these proceedings.

12 8. It is in the public interest that Plaintiff have the opportunity to examine the computers
13 and hard drives without alteration.

14 9. It is not in the public interest to obstruction Plaintiff's right to conduct discovery
15 under FRCP 34.

16 For the forgoing reasons the Court concludes that it should issue a Temporary
17 Restraining Order without notice as follows:

18 Defendant Oregon City, its officers, counsel, agents, employees and those acting in
19 concert with them to:

20 1. Preserve the hard drive or drives of certain computers owned by Defendant located in
21 *office of* Mr. Birch's *of* and the sign room at Oregon City's facility located at 122 S. Center Street, Oregon
22 City, Oregon (hereinafter computers A & B) *(untrue copies are made)* .
23
24
25
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2. Ensure that James Birch has no access to computer A or B any other computer or ~~network owned by Defendant.~~ *until copies of those computer hard-drives are made. JFB 7-9-2010*

3. Preserve all records of computer use by James Birch from June 1, 2009 through the present time. *JFB 7-9-2010*

4. ~~Preserve all records of access through Defendant Oregon City's network to a certain AOL email account with the email address of "Jfannyru@aol.com".~~ *To the extent practicable given the date and hour of this hearing existing as of today*

5. Defendant Oregon City forthwith make copies of the hard drives of computers A and B and retain such copies until Plaintiff has had the opportunity to inspect the hard drives under procedures to be agreed upon by the parties. *JFB*

The Court further orders that James Birch, his agents, attorneys and those acting in concert with them to immediately:

1. Cease and desist from accessing the AOL email account with the email address of "jfannyru@aol.com" or any other email account owned or used by Plaintiff.

2. Refrain from accessing any computer or network owned by Defendant Oregon City including but not limited to computers A and B.

3. Preserve all written and digital records of access through Defendant Oregon City's network and computers to a certain AOL email account with the email address of "Jfannyru@aol.com" or any other address owned or used by Plaintiff.

4. Preserve all records of access through his network, home computer or notebook to a certain AOL email account with the email address of "jafannyru@aol.com" or any other address owned or used by Plaintiff.

5. ~~Preserve and immediately turn over to counsel for Defendant,~~ *JFB bring to the same Court hearing before Judge Hays* copies of all printouts of any and all emails obtained from a certain AOL email account with the email address of "jfannyru@aol.com" or any other address owned or used by Plaintiff.

bring to the show cause hearing before J. Haggerty on 7/15/2010
 6. Preserve and immediately ~~turn over to counsel for Defendant~~, the hard drives of all
 computers owned or used by him from June 1, 2009 to the present time.

bring to the show cause hearing before Judge Haggerty
 7. ~~Turn over to counsel for Plaintiff~~ all copies of communications between Plaintiff and
 her lawyer.
 7-15-2010

q. The Court determines there is not any need for Plaintiff
 Plaintiff shall post security in the amount of _____
 to post a bond.

This Temporary Restraining Order shall remain in effect until 3 PM July 15, 2010.

at which time Judge Haggerty will conduct a show cause hearing in Courtroom

Dated at Portland, Oregon this 9th day of July, 2010 at 4:45 PM M.

13A g. Mitchell
 U.S. Courthouse.
 1000 SW 3rd Ave.

Ancer L. Haggerty
 US District Court Judge

Portland, OR
 97204

The Court directs James Birch to appear before
 Judge Haggerty on July 15, 2010, @ 3:00 P.M. to show
 cause why this order should not be continued.

Aunger from
 U.S. District Judge